

Work Session

Agenda Item #	8
Meeting Date	April 4, 2005
Prepared By	Barbara B. Matthews
Approved By	

Discussion Item	Community Center Use and Rental Policies
Background	<p>On February 22, 2005, a work session was held to discuss operational aspects of the Community Center. During the work session, staff apprised the City Council of certain revenue generation decision-making points for future discussion.</p> <p>The work session on April 4, 2005 will encompass the following issues:</p> <ul style="list-style-type: none">• Revenue generation opportunities and available space in Community Center• Use and rental policies of other jurisdictions• Priority of use• Partnerships• Staff recommendations• Sample rates
Policy	Staff will provide the City Council with information pertaining to the use and rental of the Community Center for their consideration.
Fiscal Impact	Revenue generated by the Community Center will depend on the City Council's direction regarding priorities for the facility's use.
Attachments	Copy of slide presentation prepared by staff for April 4, 2005 work session and related back-up documentation; Memo from City Attorney
Recommendation	The City Council will review and consider the information provided by staff and provide feedback and direction on the use and rental of the Community Center so that policies can be finalized.
Special Consideration	

S I L B E R &

MEMO

P E R L M A N

To: Debra Haiduven, Recreation Director
Cc: Barbara Matthews, City Manager
From: Kenneth Sigman, Asst. City Attorney
Subject: Community Center use policy.
Date: April 1, 2005

LEGAL AND CONFIDENTIAL

Questions Presented

We have been asked to provide guidance to the Recreation Department regarding the establishment of a policy for the rental of Community Center space by individuals and community organizations. You have specifically asked for guidance on the establishment of a schedule of priority of use, the authority to charge different rates for different users, and the type of activities and groups that the City may permit or prohibit. The regulation of the type of activities and groups that the City may permit or prohibit involves several competing Constitutional issues, including freedom of speech, freedom of religion, and the separation of church and state. The analysis of these constitutional issues is highly dependent upon the facts of each case. In addition, therefore, I am not able to provide you with precise guidance at this point. However, I will attempt to provide a basic explanation of the matters that the City should consider when deciding what uses to permit or prohibit in the Community Center.

Discussion

Priority of Use.

The City may give priority to requests to use the Community Center based on various non-discriminatory factors, such as the relationship of the proposed use to the purpose of the Community Center. For example, if the primary purpose of the facilities available for rental is recreation, and the secondary purpose is to provide space for Council-appointed bodies to meet, the City may give priority to use by the Recreation Department, then to City boards, commissions, committees, and task forces, then to non-profit community organizations (with a certain percentage of the membership comprised of City residents), then to individual City residents and City businesses, and then to non-residents individuals, organizations, and businesses. Because the Community Center is intended to benefit the City and its residents, giving preferential treatment to residents over non-residents is lawful.

Rental Rates.

The City may also lawfully charge different rates to different users. The rate variation must simply relate to the purpose of the community center (to benefit the Takoma Park community as a whole). For example the City may charge a lower rate for City based community groups than for individual residents. It can also charge a higher rate for business renters than for individuals and can charge a higher rate for non-City residents and non-City based organizations and businesses than for City residents and City based businesses and organizations. The City cannot charge different rates based solely on the viewpoint of an organization or based on protected classifications such as race, religion, or sex. For example, the City could not charge a higher rate for a City based anti-abortion organization than it charges for a City based pro-choice organization, and could not charge a higher rate for a City-based church than it charges for a City-based gardening club, or a higher rate for the Boy Scouts than for the Girl Scouts.

In addition, the rates can vary based on differences in the facilities provided, such as room size, amenities, and services such as set-up and clean-up. The rates may vary between the New Hampshire Avenue center and the new Community Center simply because they are different facilities.

Limiting the Use of the Community Center.

The City may limit the uses for which it will rent out space in the Community center by stating the general purpose of the Community Center and identifying specific purposes of the Community Center, and by expressly prohibiting certain uses. For example, the general purpose of the Community could be to provide residents a place to participate in activities that benefit the Takoma Park community. Specific purposes could include providing space for Recreation Department programs, community group meetings, City sponsored events, social functions, and fitness activities. The policy could specifically authorize uses such as wedding receptions, birthday parties, bar mitzvahs, and other private social functions.

The policy should prohibit uses that would interfere with other permitted uses of the Community Center or that may incite disturbances. The City can, and should, expressly prohibit specific uses that it has deemed would interfere with other uses of the Community Center or that it deems to be inconsistent with the purposes of the Community Center. Such prohibitions must be viewpoint neutral and must be rationally related to a legitimate governmental interest. For example, the City could prohibit the use of the Community Center for band practice because the noise would interfere with meetings and other functions.

Special Considerations for Religious Groups.

The City must ensure that it does not violate the Establishment Clause of the First Amendment, which the Supreme Court has interpreted as prohibiting governments from giving the impression that it endorses a particular religion through its allowance of use of the Community Center for religious purposes. The City can avoid giving the impression of endorsing a particular religion by treating different religious groups equally and treating religious groups and other similarly situated groups

equally when the groups apply for access to the Community Center. The City should also prohibit religious services in the Community Center where City officials or employees preside over the services.

If the City wishes to prohibit religious services, it can only do so by expressly limiting the purposes for which the Community Center can be used to purposes that are substantially dissimilar to religious services. For example if the City's policy were to limit the use of the Community Center to civic groups for the discussion of matters of public importance and to athletic organizations for athletic practice and competitions, then the City could lawfully exclude religious organizations. The City cannot simply state that religious organizations may not use the Community Center while making the Community Center available to other groups that may offer similar activities. For example, the City could not prohibit a religious organization from using the Community Center for religious services while leaving open the possibility that another group could use the Community Center for programs that promote moral development from a secular perspective.

General Advice.

The creation of a clear written policy will help ensure that the City treats persons wishing to use the Community Center fairly. A description of the general and specific purposes of the Community Center will provide the City with greater authority to prohibit activities that are inconsistent with the stated purposes. If the City does not define the intended purpose of the Community Center and impose express viewpoint neutral restrictions, then the City may find it much more difficult to limit who uses the Community Center and how they use it. You may find a clear indication of the intended purposes of the Community Center in existing resolutions or ordinances, or this may be a matter that should be addressed by the Council.

Because of the complex Constitutional issues involved in developing a use policy for the Community Center and the necessity of knowing all of the relevant facts before determining the legality of specific policies, I believe that the best approach to the regulations would be for the Recreation Department to prepare a use policy that states the general and specific purposes of the Community Center and incorporates all of the provisions that you believe are desirable for the City. The model policies that you provided to us generally appear to be lawful, so you may want to use them as models. Once you have completed a draft, we can review it to ensure that it is lawful, help you achieve your goals in a lawful manner, and provide suggestions for improvement.

Please call if you have any questions.